

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.115 of 2012

Against judgment of conviction dated 12.1.2012 and order of sentence dated 17.1.2012, passed by the Additional Sessions Judge-X, Patna in Sessions Trial No. 1425 of 2009, arising Out of GR Case no. 2238 of 2009, Budha colony Police station Case No. 92 of 2009.

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Ramanand Prasad Sinha, son of Late Jagdish Prasad, resident of Bichali Mandiri, Bapu Nagar, Police Station Budha colony, district patna Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr.Surendra Singh, Senior Advocate,
Mr. Krishna Pd.Singh, Senior Advocate &
Mr. Phulendra Kumar, Advocate

For the Respondent : Mr. Shiwesh Chandra Mishra, Addl. Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 17-07-2017

The instant appeal is filed against judgment of conviction dated 12.1.2012, passed in Sessions Trial No. 1425 of 2009, by the learned Additional Sessions Judge-X, Patna, whereby the learned judge while acquitting two accused persons convicted the appellant under section 302 of the IPC and 27 of the Arms. For the offence under section 302 IPC, the appellant has been sentenced to imprisonment for life along with a fine of Rs.10,000/- and in default of payment of fine to undergo further imprisonment for three months. For the offence under section 27 of the Arms Act, he has been sentenced to three years imprisonment along with a fine of Rs.1000/- and in default of payment of fine to undergo additional imprisonment for a month. Both the sentences were



however directed to run concurrently.

2. The prosecution case, as made out in the fard beyan of Rinki Devi, PW 12, wife of the deceased Jitendra Kumar @ Chotu Kumar of village Bichli Mandiri Police Station Budha colony, District Patna, recorded by SI R.N.Yadav of Budha colony Police Station on 11.5.2009 at 10.30 am at PMCH, Patna, in short, is as follows:-

The informant stated that on 11.5.2009 in the morning her husband had gone to Modern Competitive School, Budha colony to drop his son Ankit and she was going to her house at Budha colony. Meanwhile, at about 6.30 am she reached in front of house of Pandey Jee at Road no. 23, she saw Ramanand Prasad Sinha and his son Chintu Kumar riding on a motorcycle were following her husband and two more persons came behind them on another motorcycle. In the meantime, Ramanand Prasad Sinha opened fire from his pistol on her husband as a result of which he received firearm injury on his chest and fell on the ground. Thereafter the accused persons fled away. On hearing the sound of firing a large number of people arrived at the spot and with their help she took him to the PMCH for treatment. She further stated that Ramanand Prasad Sinha had purchased a land/building of one Binod Paswan in which her husband was a middle man and for his services he used to demand commission money from Ramanand Prasad Sinha,



who evaded the payment. However, he threatened the informant's husband that he would be killed if demanded his commission. On basis of the fard beyan of the informant, Budha colony Police Station case no. 92 of 2009 (GR No. 2238/09) was registered against Ramanand Prasad Sinha, his son Chintu Kumar and other two unknown persons under sections 307/34 IPC and 27 Arms Act. Later on section 302 IPC was added after the death of Jitendra Kumar.

3. In course of investigation, police prepared inquest report, took further statement of informant and other witnesses and obtained post mortem report. Police also inspected the place of occurrence and submitted charge sheet against three persons, namely, appellant Ramanand Prasad Sinha, Lotha Gope alias Niranjani Yadav and Ravi Rai alias Ravi Yadav for offence under sections 302/34 IPC and 27 Arms Act, whereas it did not send up Chintu Kumar, son of Ramanand Prasad Sinha finding the allegation to be false against him. Learned Magistrate took cognizance of offence and committed the case to the court of sessions for trial. Charge was framed under sections 302/34 IPC against all the accused persons, whereas a separate charge under section 302 IPC and 27 Arms Act was also framed against accused Ramanand Prasad Sinha. The trial court framed charges to which the accused pleaded not guilty and claimed to be tried. Case of the



defence in the statement under section 313 Cr.P.C. was one of complete denial of occurrence and false implication.

4. The defence also examined two witnesses, namely, DW 1 Mahesh Prasad and DW 2 Raj Kumar Mishra in support of its case and also produced documents including the SOD register, bed head ticket relating to PMCH as exhibit B, C and D. The trial court relying upon the evidence of the informant PW 12 and medical evidence convicted the appellant.

5. The prosecution in support of its case has examined 15 witnesses. Out of them, PW 1 Upendra Kumar the own brother of the deceased and PWs 2 Satya Narayan Prasad alias Satyanarayan Mahto, PW 3 Narayan Prasad, PW 4 Ramji Rai, PW 5 Shyam Babu Yadav , PW 6 Nageshwar Prasad, PWE 7 Sudhir Kumar alias Joni, PW 8 Rajesh Kumar, PW 9 Raju Kumar, PW 10 Mahesh Prasad Sinha and PW 11 Umesh Prasad have not supported the prosecution case. PW 12 Rinku Devi, wife of the deceased has claimed to be eye witness of the occurrence. PW 13 Md. Sainul Haque is the IO of the case. PW 14 Dr. Anil Kumar, conducted post mortem on the dead body of the deceased in the PMCH. PW 15 (Misten Alam) is a formal witness.

6. Mr. Surendra Singh, learned Senior counsel appearing for the appellant submits that the occurrence took place early in the morning on a pitch road near the house of one Pandey Jee at Road



No. 23 of the Budha colony. He submits that no body has witnessed the appellant opening fire at informant's husband leading to his death. PW 1 to PW 11 have even not claimed to have seen the occurrence in the court and only the informant PW 12 claims herself to be the eye witness to the occurrence. However the conduct of the informant would demonstrate that she has not witnessed the occurrence and has cooked up the story to falsely implicate the appellant Ramanand Prasad Sinha and his son Chintu Kumar in this case. He submits that the informant neither in the FIR nor in the evidence stated that she either raised hulla or informed any of the family members of the incident. The informant even did not try to cover the wound of her husband with Sari nor did she try to raise him in her arms which would have been a normal conduct of a wife whose husband is wounded. He submits that the informant for the first time revealed the names of the accused persons in the hospital at the time of recording of the fard beyan at about 10.30 AM. The conduct of the informant would further only strengthen the suspicion that she had not seen the occurrence and lodged a false case against the appellant and his son after four hours of the incident. He then argues that the evidence of such witness who does not disclose the name of the assailants to the family members, soon after the murder, should not be believed and should be rejected. In support of the submission, learned counsel has placed reliance on the judgments rendered in



case of **Ganesh Bhavan Patel and another Vs. State of Maharashtra**, reported in **AIR 1979 SC 135**, **Din Dayal Vs. Rasj Kumar @ Raju and others**, reported in **AIR 1999 SC 537**, **Anil Phukan Vs. State of Assam**, reported in **AIR 1993 SC 1462**. He next submits that there is delay of 24 hours in sending the counter folio in the court which also creates a doubt whether the fard beyan was made on 11.5.2009. Besides this, there are some cuttings in the fard beyan and all these circumstances raise doubt whether the FIR lodged by the informant is fully reliable. In support of the submission, learned counsel relies upon a decision in case of **Bhajan Singh alias Harbhajan Singh and ors Vs. State of Haryana with other analogous cases**, reported in **AIR 2011 SC 2552**.

7. Per contra Mr. Shivesh Chandra Mishra, learned Additional Public Prosecutor has defended the judgment of conviction and sentence passed against the appellant. He submits that the informant too proceeded for her Budha colony house with her husband who had gone to drop his son to Modern High School and was on his way back. Meanwhile, she saw two unknown persons riding a motorcycle along with Ramanand Prasad Sinha and his son Chintu Yadav on another motorcycle following her husband from behind. In the meantime, Ramanand Prasad Sinha took out his pistol and fired at the back portion of the head of her



husband. Thereafter, Ramanand Prasad Sinha and his son both fled in southern direction. She stated that soon after the firing people had gathered and with their help she took her injured husband to the PMCH for treatment. As such, learned counsel submits that the submission of the appellant that the informant did not raise hulla, is not of much consequence as a large number of people immediately gathered at the spot. The informant thereafter took her husband to the PMCH for treatment and only within four hours of the incident she recorded her statement. Further, the statement of the informant is also corroborated by medical evidence and post mortem report.

8. We have heard learned counsel for the parties and perused the materials on record.

9. We now take up one by one the submissions made by Surendra Singh, learned Senior counsel appearing for the appellant. Learned counsel argued that there was a delay in sending the FIR to the court. We find from the fard beyan that the same was recorded on 11.5.2009 at 10.30 am and the formal FIR was raised at 12.05 pm which was signed by the learned magistrate also on the next date i.e. 12.5.2009. As such, does not seem any reason to discard the prosecution case on the ground that the FIR was received in the court after 20 to 24 hours of its registration. As such, we do not find that there was any delay in sending the FIR to the Court.

10. On going through the evidence of the informant, we find



that she has supported the prosecution case as mentioned in FIR as an eye witness. It is true that the informant is an interested witness being wife of the deceased but we find her evidence convincing and reliable and in consonance with the prosecution case recorded in the FIR. An evidence of a witness cannot be discarded merely because one is an interested witness. The defence too has not been able to elicit any material contradiction to render her evidence unreliable.

11. The defence argued that PW 12 in her evidence stated that once her husband was carried to PMCH from the place of occurrence, she returned to her house but she did not disclose the incident to any of the family members which would be a very unnatural conduct of a wife. We find from the evidence of the informant that PW 1, the brother of the deceased, was also at the place of occurrence and carried her husband to the PMCH for treatment from Budha Colony. The informant thereafter returned to the house from where she proceeded for PMCH by Rickshaw where she gave fard beyan to the police at 10.30 am. It is common knowledge that it will take minimum of 40 to 45 minutes to reach the PMCH from Budha colony by rickshaw. As such, we do not find the conduct so unnatural to discard her evidence of the informant. Furthermore, there is no cross examination on point of non-disclosure of name of assailant to other family members, who



were present in the house just after returning from the place of occurrence. We find that the informant has given fard beyan within four hours of the occurrence revealing the name of the accused. The post mortem report also corroborates the prosecution case that the deceased was shot in his head.

12. The defence has laid much stress on the SOD register and bed head ticket of the hospital to the effect that the lacerated wound which deceased had sustained might have been caused in road accident and not by fire arm injury. In this respect, we refer to the evidence of PW 14 Dr. Anil Kumar, who conducted post mortem on the body of the deceased. He has stated that the deceased sustained two injuries. Injury no.1 was lacerated wound of size 1 ½” x ½” x cavity deep on right partial occipital junction situated five inch above and behind right ear from which brain matter was draining out. He has further stated that on tracking the bullet pass way, it was found that while passing, the bullet hit the scalp bone, fracturing it (right partial occipital bone) and passed through the brain matter on right side and lodged in frontal region hitting the internal surface of frontal bone without any wound of entry. Injury no.2 was abrasion on right elbow of size 1” x 1/2”. While recording opinion no. 1, the doctor stated that injury no.1 was caused by bullet (firearm) and injury no.2 was caused by hard and blunt object. He stated that the cause of death was brain injury



caused by bullet. The doctor further stated that on dissection of scalp, a bullet was recovered from brain cavity with its broken pieces.

13. It is true that PWs. 1,2,3,4,5,6,7,8 and 9 have stated that the husband of informant Jitendra Kumar alias Chhotu became injured in an accident. He was taken to the PMCH by them. Later on his wife came to the PMCH. They further stated that their statements to this effect were not recorded by the police. Appellants contended that in the instant case conviction is entirely based on the testimony of a single witness i.e. the informant PW 12 and is on a slippery ground.

14. We find that the testimony of this witness is in consonance with the prosecution case recorded in the FIR. In her deposition, PW 12 has stated that the appellant was accompanied with his son Chintu Kumar at the time he followed her husband and fired at his head from the back leading to his death. However, the police found the implication of Chintu to be false. In our view, it is not very uncommon that at times witnesses try to add some more names besides the accused, and the exaggeration would not cut at the root of the prosecution case, as the evidence of the informant is otherwise consistent and is also corroborated by the post mortem report.

15. In backdrop of above discussions, we do hold that the



prosecution has established the charge under section 302 IPC against the appellant. The judgment of trial court convicting the appellant, is upheld. So far as sentence is concerned, we reduce the fine of Rs. 10,000/- under section 302 IPC to Rs.3000/- and in default of payment of fine, the further imprisonment in lieu of it is reduced to one month from three months. Fine of Rs.1000/- under section 27 Arms Act is reduced to Rs.500/-. As directed by the trial court, both the sentence under sections 302 IPC and 27 Arms Act would run concurrently. The appellant will remain in custody to serve the remaining part of the sentence.

17. The appeal is thus dismissed with the aforesaid modification in sentence.

(Samarendra Pratap Singh, J)

(Prakash Chandra Jaiswal, J)

Shashi.

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